

No. 15,780

IN THE  
United States Court of Appeals  
For the Ninth Circuit

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JAMES A. WILLIAMS,

*Appellant,*

vs.

C. P. COUGHLAN, TED McROBERTS, OTHEAL  
WAITLAND, LA DESSA NORDALE, T. N.  
GORE, and R. J. McNEALY,

*Appellees.*

On Appeal from the District Court of the United States for the  
District of Alaska, Fourth Judicial Division.

BRIEF FOR APPELLEE.

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FILED

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**BRIEF FOR APPELLEE.**

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**JURISDICTION.**

The jurisdiction of the District Court below was based upon the Act of June 6, 1900, c. 786, Section 4, 31 Stat. 322, as amended, 48 U.S.C. 101.

The jurisdiction of this Court of Appeals is invoked pursuant to the Act of June 25, 1948, c. 646, 62 Stat. 929, as amended, 28 U.S.C. 1291.

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**STATEMENT OF THE CASE.**

On October 15, 1956, James A. Williams, appellant, filed a complaint, civil number 9165, in the District

Court for the District of Alaska, Fourth Judicial Division. Appellant alleged in this complaint, "That defendant, Ted McRoberts, while acting in the capacity of U. S. Marshal in the above district on or about the 7th day of July, 1953 did then and there being did unlawfully and without a search or seizure warrant, seize and carry all of the plaintiff's stock and bar equipment from the plaintiff's business known as the Monte Carlo Club which was located at 1401 Turner Street, Fairbanks, Alaska. Said defendant Ted McRoberts had refused to account for the above stock and equipment.'" He further prayed for judgment against the defendant McRoberts in the sum of ten thousand dollars.

C. P. Coughlan was never served with process. This Court dismissed the action as to McNealy, see *Williams v. Coughlin*, et al., 244 F. 2d 6 (9th Cir. 1957); Waitland filed an answer. On October 23, 1956, McRoberts filed a motion to dismiss the action on the grounds that Williams was confined in the penitentiary and was without capacity to sue. This motion was still pending when another motion to dismiss was filed by the United States Attorney, who represented McRoberts in his official capacity as acting United States Marshal and La Dessa Nordale, as United States Commissioner. That the statute of limitations had run at the time suit was filed and McRoberts was not subject to suit for acts committed within the scope of his authority as United States Marshal were the two grounds for the motion to dismiss. On October 5, 1957, the order of dismissal of the cause of

action was granted by the district judge upon the authority of the opinion in *Williams v. Coughlan*.

The appellant filed a notice of appeal from this order as to the defendant, McRoberts. However, he did not apply to the District Court for leave to proceed in *forma pauperis*, but designated the previous order which was granted in the former case, *Williams v. Coughlan*, 244 F. 2d 6 (9th Cir. 1957) No. 15,405.

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### QUESTIONS PRESENTED.

Whether this appeal should be dismissed for failure of the appellant to proceed in accordance with 28 U.S.C.A. 1915(a) and (b).

Whether the action should not be dismissed by this Court upon the grounds that a United States Marshal is immune from civil liability when acting within the scope of his authority.

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### ARGUMENT.

#### I.

#### THE APPEAL SHOULD BE DISMISSED FOR FAILURE OF THE APPELLANT TO APPLY FOR LEAVE TO APPEAL IN FORMA PAUPERIS.

Appellant filed his notice of appeal, but failed to apply to the Court for leave to proceed in *forma pauperis* as required by 28 U.S.C.A. 1915(a) and (b). The leave to proceed in *forma pauperis* which was sent to this Court was granted in *Williams v. Cough-*



lan, No. 15405, such leave was not granted in the present appeal. This appeal should be dismissed for non-compliance with the above statute.

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## II.

**THE ACTION AS TO McROBERTS SHOULD BE DISMISSED BECAUSE HE WAS ACTING WITHIN THE SCOPE OF HIS AUTHORITY AND IMMUNE FROM CIVIL LIABILITY.**

The appellant alleged that the appellee McRoberts, while acting in the capacity of United States Marshal seized certain liquor at the Monte Carlo Club and he has been damaged in the sum of ten thousand dollars from the unlawful seizure. The affidavit of McRoberts, which was submitted to the District Court accompanying the motion to dismiss also supports the fact that the appellee was acting within his scope of authority.

The appellee went to the Monte Carlo Club to serve a warrant on the appellant for selling liquor without a license and incident to this arrest seized certain open bottles of liquor and glasses, which were setting in front of customers at the club. The authorities are unanimous in holding that a United States Marshal is not liable for acts committed within the scope of his authority. *Swanson v. Willis*, 220 F. 2d 440 (9th Cir. 1955), 114 F. Supp. 434; *Cooper v. O'Connor*, 99 F. 2d 135 (D.C. Cir. 1938), cert. den. 305 U.S. 643 (1938); *Allen v. U. S.*, 154 F. 2d 329 (D.C. Cir. 1946); *Phelps v. Dawson*, 97 F. 2d 339 (8th Cir. 1938); *Taylor v. Glotfelty*, 201 F. 2d 51 (6th Cir. 1952); *Bell*



*v. Hood*, 71 F. Supp. 813 (S.D. Cal. 1947). The action should be dismissed for failure to state a claim.

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### CONCLUSION.

For the reasons stated, the appellee respectfully submits that the appeal should be dismissed or the cause of action dismissed.

Dated, Fairbanks, Alaska,  
December 13, 1957.

Respectfully submitted,  
GEORGE M. YEAGER,  
United States Attorney,  
*Attorney for Appellee.*

(Appendix Follows.)



## **Appendix.**



## Appendix

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28 U.S.C.A. § 1915(a) and (b). *Proceedings in forma pauperis*.

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a citizen who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b) In any civil or criminal case the court may, upon the filing of a like affidavit, direct that the expense of furnishing a stenographic transcript and printing the record on appeal, if such printing is required by the appellate court, be paid by the United States, and the same shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

